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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,317	03/26/2001	Jonathan Williams	DATA_56	8857

7590  
Datascope Corp.  
14 Philips Parkway  
Montvale, NJ 07645

01/22/2004

EXAMINER

BRADFORD, RODERICK D

ART UNIT PAPER NUMBER

3762

DATE MAILED: 01/22/2004

8

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/817,317

Applicant(s)

WILLIAMS ET AL.

Examiner

Roderick Bradford

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 15-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 15-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 7.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1-5, 7 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Boutelle et al. U.S. Patent No. 5,380,267.

Referring to claim 1, Boutelle discloses a medical device pump comprising a compressor (10), a negative pressure reservoir connected to said compressor (Fig.2), said negative pressure reservoir containing a muffling means (Fig. 5).

Referring to claim 2, further comprising a positive pressure reservoir connected to the compressor (Fig. 2).

Referring to claim 3, further comprising a positive pressure reservoir connected to the compressor and an isolator enclosure connected to both the positive pressure reservoir and the negative pressure reservoir, said isolator enclosure comprising an enclosed volume divided by a pliant membrane into a primary and secondary side (Fig.5).

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Referring to claim 4, further comprising a positive pressure reservoir connected to the compressor and an isolator enclosure connected to both the positive and negative pressure reservoir, said isolator enclosure comprising an enclosed volume divided by a pliant membrane into a primary and secondary side, secondary side being in communication with a balloon catheter, shifting the pliant member from side to side causes the balloon to inflate and deflate (Fig. 5).

Referring to claim 5, further comprising a positive pressure reservoir connected to the compressor and an isolator enclosure connected to both the positive and negative pressure reservoir, said isolator enclosure comprising an enclosed volume divided by a pliant membrane into a primary and secondary side, a first valve is connected between positive pressure reservoir and the primary side of the isolator, said secondary side being in communication with a balloon catheter, shifting the pliant member from side to side causes the balloon to inflate and deflate (Fig. 5).

Referring to claim 7, wherein decreased pressure in negative pressure reservoir created by the compressor results in a rush of gas flow into said negative pressure reservoir and wherein the muffling means comprises one or more walls extending in-line with the initial direction of gas flow into the negative pressure reservoir (column 7, line 44 – column 8, lines 1-8).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 6, 8-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boutelle et al. U.S. Patent No. 5,380,267.

Referring to claim 6, Boutelle discloses the claimed invention except for wherein the compressor maintains a predetermined vacuum level in the negative pressure reservoir and upon opening the second valve gas rushes from the primary side of the isolator into the negative pressure reservoir. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the teachings as taught by Boutelle, with a compressor that maintains a predetermined vacuum level in the negative pressure reservoir and upon opening the second valve gas rushes from the primary side of the isolator into the negative pressure reservoir since it was well known in the art to maintain a predetermine vacuum level in the negative pressure reservoir and upon opening the second valve gas rushes from the primary side of the

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isolator into the negative pressure reservoir as a means to ensure that there is a pressure release in order to prevent the pump from popping the balloon.

Referring to claims 8-12 and 14, Boutelle discloses the claimed invention except for wherein decreased pressure in negative pressure reservoir created by compressor results in a rush of gas flow into said negative pressure reservoir and wherein the muffling means comprises one or more walls extending in line with the initial direction of the gas flow into the negative pressure reservoir, a traverse cross section of said one or more walls comprises one or more enclosed shapes, one or more circles, honeycomb structure, or one or more tubes disclosed within one another. It would have been an obvious matter of design choice to one having ordinary skill in the art to modify the device of Boutelle with wherein decreased pressure in negative pressure reservoir created by compressor results in a rush of gas flow into said negative pressure reservoir and wherein the muffling means comprises one or more walls extending in line with the initial direction of the gas flow into the negative pressure reservoir, a traverse cross section of said one or more walls comprises one or more enclosed shapes, one or more circles, honeycomb structure, or one or more tubes disclosed within one another, since the applicant has not disclosed that a pump wherein decreased pressure in negative pressure reservoir created by compressor results in a rush of gas flow into said negative pressure reservoir and wherein the muffling means comprises one or more walls extending in line with the initial direction of the gas flow into the negative pressure reservoir, a traverse cross section of said one or more walls comprises one or more enclosed shapes, one or more circles, honeycomb structure, or one or more tubes

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disclosed within one another provides any criticality and/or unexpected results and it appears that the invention would perform equally well with muffling structure, such as the muffling structure as taught by Boutelle as a means to reduce noise.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roderick Bradford whose telephone number is (703) 305-3287. The examiner can normally be reached on Monday - Friday 7 a.m. - 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

*R. Bradford*  
R.B.

*Angela D. Sykes*

ANGELA D. SYKES  
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